MR. YOUNG: Right. Now subsequent to that and in three volumes later, in the Dowd vs. Hodge case, decided March 26, 1956, the Supreme Court of the United States in the words of Mr. Justice Minton, stated that they might come in direct or plaintiffs might come in direct to a three-Judge Court.

Mr. William C. Wines, an Assistant Attorney General of the State of Illinois in his brief immediately preceding the opinion of Mr. Justice Minton, as shown in Law Edition, raised the very point that your Honor asked of me. He stated that the complainants—and I read from page 578 of 100 Law Edition, which is 350 U.S. at 485. Mr. Wines stated in his brief this:

> "Where plaintiffs have a clear and adequate remedy in the State courts, as they do here, the Federal courts will not entertain equity jurisdiction to pass upon the constitutionality of State legislation."

Thereafter there are certain cases cited.

However, the Supreme Court of the United States disregarded or swept aside the arguments of the Attorney General of the State of Illinois, and sent the matter back to the three-Judge court in Illinois with these words, which I quote from page 579:

> "We hold that the District Court had jurisdiction of this cause. It was error to dismiss the complaint for lack of jurisdiction. The judgment of the District Court is vacated and the case is remanded to it. We do not decide what procedures the District Court should follow on remand."

Now this is the latest case that I have been able to find in the United States. It is Dowd vs. Hodge.

And again we have still another case. I want to cite from ie work of Barron and Holtzoff, Volume 1, page 631, Sec- ion 352, and we are again talking about three-Judge courts s created by the statute which I have cited:

"Jurisdiction is to be determined from the allegations of the complaint and has nothing to do with the merits."

It cites then the case in 31 in the notes.

"Thus if alleged violations of the fourth and fifth amendments to the Constitution form the sole basis of the relief sought and the allegations show a violation of plaintiff's legal rights, the court could not dismiss the action for want of jurisdiction as patently without merit."

That cites note 32.

"A motion to dismiss should not be granted without making certain that jurisdiction is lacking and cannot be shown by amendment."

Now in the notes there is cited the case of Sullivan vs. Title Guarantee & Trust Co., from the District Court of New York in 1947, which is 74 Fed. Supp. 964, where, and I read the headnote from Barron & Holtzoff:

"Action in Federal district court against testamentary trustee by sole beneficiary for damages from improper administration of trust or restoration of corpus of trust and for an accounting was not subject to dismissal on ground that court had no jurisdiction to administer decedent's estate, since administration was not thereby attempted."

And if we go on and read that, there was likewise certain remedies existing in that particular case in the courts of the State of New York.

JUDGE SIMONS: That is between private parties?

MR. YOUNG: That is between private parties, yes. Now Dowd vs. Hodge—Mr. Hodge I believe was Treasurer of the State of Illinois, and recently was involved in a scandal over there. But at the time this case came up he was not involved in a scandal. And the plaintiffs in that case sought to restrain certain actions of State officers in behalf of the State of Illinois. In other words, they were attempting to administer state statutes and they were actually proceeding in the same manner as we are here, asking that certain things be restrained, and technically it is pretty much the same as we are here. That is what it reduces itself to.

And again, I wanted to complete the statement that I started to make before: when our bill of complaint is read we are not seeking to restrain the enforcement of a criminal statute in the State of Michigan, such as was before this Honorable Court in the case of Albertson vs. Millard, nor are we seeking to restrain the actions of the one-man grand juror, as was before the Honorable Mr. Justice Levin in the case of the Society of Good Neighbors vs. Groat.

What we are seeking to restrain in this case might be likened to this; and your Honor has been on this court as a District Judge and then as an Appellate Judge for many years, and you know this situation readily to exist. And I might liken it to an income tax evasion case. All three of your Honors have had this experience. A man is indicted for income tax evasion or fraud; likewise at the same time a civil suit has been filed by the United States District Attorney to collect those taxes. Now in this court, this Honor-

able United States Court, what has always occurred, at least in the only experiences I have had here, is that always this court requires the criminal case to proceed ahead of the civil case in order that the doctrine of self-incrimination of a defendant or the opportunity for him to present witnesses in his own behalf in the civil case might be had. Now whether that is a matter of policy or whether it is a matter of law—of course, I contend it is a matter of law. That has occurred time and time again in this case.

The State of Michigan in their brief raised the question of an assault and battery case, which to me is beside the point. I would rather take the income tax case because that occurs in this court all the time when men are indicted for evasion or fraud.

Likewise the District Attorney at one and the same time will file suit for thousands or millions of dollars and this court immediately brings them to trial in the criminal case. They do so for one reason, so that a man in the civil case may not be compelled to testify against himself. He may be able to get witnesses in his own behalf. There is no question of self-incrimination.

Now all we are really asking this court to do in this particular complaint,—and even though it happens to be against actions under a State statute which we contend is unconstitutional in its operation—we think this court has jurisdiction because what we want to do here is this: in behalf of the complainants we are ready, willing and able to go to trial in the criminal case in the Circuit Court for the County of Wayne. We have done nothing whatever to delay going to trial in the alleged conspiracy case. However, we are faced with this particular dilemma and that is why we come into this court and ask relief. As I set forth in a supplemental answer that I filed this morning—and I must

apologize to the court for not being able to file it before because time just didn't give me an opportunity—but I had only twenty-four hours in which to make up my mind whether to select the three-Judge court as a forum or whether to go to the Supreme Court. That is all I was given by the defendant, the Honorable John W. Conlin of Washtenaw County. I had to make up my mind what I was to do. That was January the 9th.

I was then told, and it shows in the record here, that unless I had something done by January the 16th they would proceed to a hearing. I therefore had from somewhere around January the 9th at noon until Monday, January 14, to prepare and file a bill of complaint and get it on file in this court.

JUDGE SIMONS: You need not waste any time on that. We will receive your supplemental memorandum.

MR. YOUNG: I appreciate that. I merely point that out to show that full consideration of the elements were not brought in.

So now we are faced now in behalf of William W. Voisine, with this one problem: if we had to go to a hearing in a removal case, Mr. Voisine is willing to take the stand; however, when we look at the removal charges, which is an appendix attached to the bill of complaint, we find this situation: in the criminal case they have two men named as defendants, namely, Paul Sackenheim and Joe Kovalchik, who are defendants in a conspiracy. And then we find in the removal hearing that they have two people who claim to be witnesses against us in the removal, which are Paul Sackenheim and Joe Kovalchik.

Likewise in the information on file in the Circuit Court,

which is an appendix filed to the bill of complaint, the information lists certain witnesses and they have a man by the name of Page and a man by the name of Edwards.

In order to prepare to meet charges—and the State concedes in their brief in the removal that their removal evidence is going to be conspiracy evidence, which obviously means that they are going to present hearsay testimony—Mr. Voisine finds that not only is his own testimony necessary but it may be necessary for him to have testimony of some other people who are co-indictees with him in this conspiracy case.

Therefore, after the removal proceedings were filed, the first thing that I did was to contact Mr. Charles Jones, former Judge of the Recorders Court of the City of Detroit and say to him:

> "Mr. Jones, I would like for you to look at these removal charges, because it becomes immediately apparent that in the event at the hearing of the removal, particularly this conspiracy, this man testifies that he heard one of your clients say thus and so, that I will need their testimony."

Mr. Jones said to me—this in my supplemental answer or supplemental bill of complaint, because I filed it with the State as an affidavit—he said to me:

> "I doubt if I would permit any of my clients to testify in the Civil and/or the removal proceeding prior to the time that they are faced with the testimony in the criminal proceeding, because of the fact that they might be involved in the doctrine of self-incrimination."

I likewise then asked Mr. Lawrence E. Burns, who is at-

torney for Mr. Sackenheim and Mr. Kovalchik, who appear as defendants in the criminal conspiracy indictment in the Circuit Court, and who also appeared as attorney before the grand juror for the men Page and Edwards who are named as witnesses in the criminal case against us—I said to Mr. Burns:

> "It is quite possible that in the removal proceeding of Mr. Voisine if they present conspiracy or hearsay testimony that I may need their testimony."

He said:

> "You can't have their testimony until such time as we have met the criminal proceedings."

I raised all of this with the State of Michigan. In the removal proceeding I filed all of these replies. All that I am asking this court to do is not to restrain the criminal proceeding in the Circuit Court—that is before Judge Frank Fitzgerald now and they may set it for trial next week if they desire; they can issue notices of trial and we are ready to proceed. We are not asking that. We are not asking that the grand juror be restrained from further investigating of crime within the purview of the petition. But we are asking that we be given a fair and impartial chance to meet the removal proceeding. And I do not understand, Mr. Justice Simons, how I may possibly do that as attorney for Mr. Voisine unless in some way I am given an equal opportunity to have witnesses for the defense. That is the big problem that I have been confronted with.

The one-man grand juror has subpoenaed many people from the City of Ecorse. I went throughout the city of Ecorse checking around in reference to witnesses, and I then ran into this particular fact, that certain people have

been subpoenaed and have testified before the grand jury who are not listed either as co-indictees or witnesses. They say:

> "Mr. Young, I have been subpoenaed before the grand jury; I cannot talk to you."

Therefore I am blocked out from even talking to those witnesses. I am even blocked out from finding out whether or not I can use these people in defense. In other words, this matter in the removal proceeding is a civil proceeding. All that is necessary to do is to examine the State's brief—and it is an excellent brief on removal proceedings—and the Governor's letter attached to their bill of complaint, and he recognizes that there is no rule or procedure set up in removal proceedings. Therefore we do not know exactly where we are going.

I have no remedy of discovery, interrogatories; I am unable to present or prepare a defense in advance; I have to take their removal charges as they are written and struggle along.

When you say to me exhaust my remedies, we can proceed with the removal hearing for a week or ten days; Mr. Montry who testified at the preliminary examination to nothing but hearsay may take the stand and I call one of these witnesses, and he comes in and he says:

> "I refuse to testify in this proceeding because I am indicted in the criminal proceeding and whatever answer I may give may tend to incriminate me under both the laws of the State of Michigan and the Fifth Amendment."

Now where am I? I cannot get a fair and impartial hear-

ing. I then find myself in the problem of due process of law. And that is all that I am asking this court to restrain.

JUDGE SIMONS: Well the privilege that is created by the Bill of Rights is personal with the witness. You cannot assert it on your behalf. He must assert it on his behalf.

MR. YOUNG: That is correct.

JUDGE SIMONS: I do not see what that has to do with this issue here at all.

MR. YOUNG: It only has this, that I cannot obtain a fair and impartial hearing in the ouster and/or removal proceeding. Then we get into the case of Griffin vs. Illinois, which is in 100 Law Edition. In that case—and that was a criminal proceeding,—and when we arrive at that particular case the State of Illinois refused to provide an accused with the transcript of testimony in a criminal case. Finally when it reached the Supreme court of the United States they stated that the refusal to provide the accused with the transcript of testimony lacked due process of law, and remanded it. And in this case they had exhausted all of their remedies.

JUDGE SIMONS: And you haven't.

MR. YOUNG: No, I haven't exhausted them, although I am here probably two or three weeks ahead of what situation would or could develop. I have no remedy before the Governor of the State of Michigan, — I mean the State Supreme Court. If your Honor will read People ex rel. Coffey and Borne vs. Dillman, our Supreme court of Michigan has definitely and consistently refused to review the acts of the Executive.

JUDGE LEVIN: Unless they are illegal or arbitrary.

MR. YOUNG: That is correct. If they become illegal or arbitrary. In other words, I take this position and we arrive at the same position two or three or four weeks from now that we arrive at today. I would not be before this court stating that this situation would not exist unless I had attempted to prepare my case and had explored the possibility of witnesses in behalf of Mr. Voisine, and I have done that to such an extent that I find that when I get to the removal hearing the State of Michigan will have their own way.

They have the ability to use grand jury subpoenaes to bring people down to the grand jury and then bring them to the removal proceeding to testify. I must use an ordinary justice of the peace subpoena and bring them in.

I have talked to enough to know that they will refuse. Now just exactly in this exhaustion of remedies it comes down to this one point: just exactly what particular point—or what particular witness may refuse; I cannot answer your Honor this morning because I have not arrived to that point. It may be Mr. Sackenheim's testimony that I need; it may be Mr. Kovalchik; it might be Mr. Page or Mr. Edwards or some of our co-indictees, Mr. Bobo, Mr. Lackey, Mr. Gillman, Mr. Jones, or many others. But they are co-indictees in a criminal indictment; they are entitled not to take the stand against themselves at least until such time as the State has presented its case. They are entitled to a speedy trial by jury. And we are ready to meet a speedy trial by jury. That has not been given to us. That is all that we are asking.

JUDGE SIMONS: The power of removal is a constitu-

tional right in Michigan as it is in other States. It is not dependent upon conviction, necessarily.

MR. YOUNG: That is true.

JUDGE SIMONS: An officer may be removed for conduct unbecoming an officer.

MR. YOUNG: That is true.

JUDGE SIMONS: You are entitled to notice and a hearing. You have had a notice, have you?

MR. YOUNG: I have had a notice; it is attached to the bill of complaint.

JUDGE SIMONS: You have had a hearing?

MR. YOUNG: No we have had no hearing.

JUDGE SIMONS: Before the Probate Judge designated by the Governor?

MR. YOUNG: Only to the effect—the only hearing we have had before the Probate Judge to and including this time is that we have objected to proceeding on the ground that we cannot obtain a fair and impartial hearing; and in the supplemental bill of complaint—in the supplemental bill of complaint which I filed this morning I raised certain points that we had raised before the Probate Judge, the Honorable John W. Conlin, one of the defendants herein.

I quoted certain of the testimony directly out of the transcript. And Judge Conlin stated that why he was adjourning the matter—on page 205—

"It seems to me in view of the serious nature of the question involved in this matter and as to the constitutionality of the—not of the Act itself but the type of proceeding that is pending as to whether it is due process, that the officers involved should be given an opportunity to apply to Federal Court and see if the Federal Court considers it of sufficient importance to grant a temporary stay as far as this hearing is concerned. Now this is the 9th day of January, and Mr. Young has informed me that he proposes to have the application filed by the 14th. A certificate of the stenographer indicates that he will have the transcript ready by the 16th of January, which would be a week from today. So far as today is concerned we will adjourn this matter until the 16th with the understanding that if by the 16th the officers"—

and that is the complainants here—

"have filed their application for their relief in Federal Court and have noticed it for hearing by the 12th of January, then on the 16th it will be adjourned until the 23rd of January. Now that will enable the matter to be heard on the 21st. But of course there are always matters that interfere with the hearing on the first date noticed. On the 23rd I will feel this way: that if the matter is adjourned for any reason by the Attorney General"—

that is the defendants—

"then definitely the officers should be entitled to an adjournment beyond the date of hearing requested by the Attorney General. However, if the request for adjournment comes from the attorney for the officers"—

that means this side of the table; if we dare ask this court for an adjournment—

> "who are respondents in this case then I would say that we should proceed on the 23rd to start taking testimony."

Now that brings us down to this point: we have not delayed the ouster or removal proceeding irrespective of what the defendants state in their brief. On approximately the first day of November Mr. Voisine was served with the removal proceeding. As of that day Mr. Voisine was in a preliminary examination out before the justice of the peace in Grosse Pointe and we were served at recess time. It was noticed for the 13th of November. As the 13th of November came close, I spoke to the Deputy Attorney General and stated that we would not have time to prepare any defense and we weren't through with the preliminary examination, and we didn't know what was going to occur, and I suggested that we work out some adjourned date.

It was thereupon adjourned until November 21st by the Honorable John W. Conlin. On November 21st before the Honorable John W. Conlin the removal proceeding came on and at that time I filed a motion and likewise the other gentlemen likewise did, raising these particular problems that we could not meet certain situations and prepare adequately for our defense.

The Governor of the State of Michigan wrote a letter on the 20th day of November which was read into the record on the 21st; that is attached to the bill of complaint. The Governor of the State of Michigan, however, left on that particular day for South America and was not available thereafter for some period of time.

Judge Conlin read that into the record on the 21st. After we argued our situation, much as we are arguing it here, and our inability to presently present a defense, Judge Conlin stated,

> "Rather than consume a day or two in argument I think I want briefs filed."

This appears in the two transcripts I have here,—

> "That I will have briefs required from the officers and complainants by December the 12th; Mr. Farmer the Assistant Attorney General should reply by December 17th; you may come back in court before me on January the 7th, and I will rule on whether or not the proceeding should go ahead or proceed."

On January the 7th when we appeared before Judge Conlin he gave a decision in substance and in effect that he had no authority except to take a transcript of testimony and to hear it and to present it to the Governor, but that he would give me until January the 9th in order to determine whether or not I should attempt to seek a writ of prohibition or come before the three-Judge court.

JUDGE SIMONS: Well now has he, Judge Conlin, made any findings growing out of such hearing as was held?

MR. YOUNG: Yes, he denied our rights that we raised which are now repeated in this bill of complaint, and he denied that we would be denied due process of law in having a fair and impartial hearing. He denied everything that we requested. All of those documents are not before this court.

JUDGE SIMONS: You do not contend, do you, that under

the Michigan statute governing the removal proceedings you are entitled to a trial under the forms of trial in litigation generally? The Governor has to be satisfied that there has been some conduct on the part of the persons sought to be removed that was inimical to the welfare of the State of Michigan, and if he makes that decision you can attack it, can't you, in the Michigan courts as being arbitrary or capricious or without a hearing or without notice or any of the safeguards that are contained in the removal statute, in the courts of Michigan?

MR. YOUNG: That is questionable under the decision of People ex. rel. Coffey. In other words, if I am limited to certiorari, I am limited to but a few things, and I want to call this court's attention now to the case of Duncan vs. Kahanamoku, which is the Pearl Harbor case.

I believe in the judicial processes. I think that when a matter arises out of a one-man grand jury which is one and the same thing,—in other words, the events the State concedes in their brief before Judge Conlin are one and the same thing. If they were attempting to remove us under the separate removal statute which they could have initiated by completely separate evidence, we would not be here. But the one-man grand juror filed an indictment, then he filed a removal proceeding arising out of identical facts and circumstances. It is my contention that there we have —and this has not been tested—the right of a trial by jury.

It is just the same, your Honor, as saying that I—

JUDGE SIMONS: You mean you have a right to trial by jury in a removal proceeding?

MR. YOUNG: So far the matter hasn't been tested. I mean the Constitution of the State of Michigan—

JUDGE SIMONS: Well we still get back to the question whether this Federal statutory court has a right to enjoin the Governor of Michigan and the State officers of Michigan in their exercise of the constitutional power to remove an officer, when the Governor is satisfied that something inimical to the welfare of the people of the State of Michigan is involved. That is the question in this removal statute.

MR. YOUNG: That is one of the questions involved here.

JUDGE SIMONS: That is the question.

MR. YOUNG: That is the question, but we come to this court—

JUDGE SIMONS: And you do not have the right to trial by jury on that question. It is the authority—

MR. YOUNG: It is not prescribed by law, no.

JUDGE SIMONS: And if a denial of the right to trial by jury is an invasion of due process, the Michigan courts could determine that, couldn't they?

MR. YOUNG: Maybe they could and maybe they couldn't. I mean we have nothing whatsoever at this stage where we could go into the Michigan courts. We would find ourselves in this particular position: it is my understanding of the three-Judge statute that when we come in and allege that under the Constitution of the United States, that if irreparable damage and injury will occur, that this court has authority to issue an interlocutory injunction until it can inquire into the merits to see whether or not our constitutional rights are violated.

JUDGE SIMONS: All right; we understand that point. Now is there anything else, any other ground that you have for sustaining the jurisdiction of this court?

MR. YOUNG: That is all I can present.

JUDGE SIMONS: All right, then, let us hear from the Attorney General.

JUDGE LEDERLE: May I ask a couple questions of Mr. Young?

MR. YOUNG: Yes, Mr. Judge Lederle.

JUDGE LEDERLE: I wonder if this isn't the analysis of your problem? The City of Ecorse is a creature of the sovereign State of Michigan, having only such power as has been conferred upon it by the constitutional provisions plus the statute or whatever statutes are involved. The legislature in its wisdom has provided that under certain circumstances the Governor may remove an official elected by that subsidiary governmental agency, the municipality.

The Governor at this time, acting through the system set up by the legislature, is conducting an investigation. The purpose of this investigation is to give him information upon which he can act in accordance with the mandate that he received or the power that he received from the State legislature.

A portion of that investigative process consists of a hearing before a specially designated officer. The fact that that officer must be a judicial officer is merely incidental. And you are asking at this time, not that this court enjoin the Governor from removing the official, but you are asking the court at this time to order the Governor of the State

of Michigan to discontinue the investigation that he is now conducting until such time as you may have a final decision on some alleged criminal conduct of the office holder.

What constitutional right under the Federal Constitution do you think is violated in conducting this investigation?

MR. YOUNG: The only thing that I can answer you in that respect, Mr. Chief Judge Lederle, is this: that we have had during the last few years many, many investigations before various types of investigating bodies, wherein testimony has been presented against a man, and the most precious thing that he can possibly have—that is his reputation—is completely and thoroughly destroyed.

JUDGE LEDERLE: Let me interrupt you there.

MR. YOUNG: Yes.

JUDGE LEDERLE: Do you have anything involved in this removal proceeding other than what has been referred to in Michigan as the property right of a public official to collect his salary?

MR. YOUNG: We have the reputation of these men. In other words, it can be involved this way, your Honor: let us assume that—

JUDGE LEDERLE: Well I didn't want to start you off on the wrong tack. Let us come back. You fear that eventually when the Governor gets all the information that he is now seeking, that he may act in such a way as to violate the constitutional rights of your clients?

MR. YOUNG: I fear this, your Honor, and it is very

close to that, that when I get into the removal proceeding that they will present on the stand certain witnesses who will testify to certain things.

JUDGE LEDERLE: Well Mr. Young, I am one jump ahead of you.

MR. YOUNG: I know that. I am trying to catch up.

JUDGE LEDERLE: Until the Governor acts, Voisine and the other plaintiffs have lost nothing, have they?

MR. YOUNG: They are being compelled to make a defense in a removal proceeding which will completely and thoroughly expose any defense that they have in the criminal proceeding and which will compel each and all of them to testify against themselves in the criminal proceeding. You know what will happen, your Honor. These men start to take the stand in the removal proceeding, and the grand jury testimony is then brought out to impeach any witness that we may bring in. It has all been kept secret from us. I have no idea what it is.

JUDGE LEDERLE: If I could stop you there. I don't want to take up too much time here. I will repeat what I said before: you fear that the Governor may act illegally in removing your client. Wouldn't these arguments about the invalidity or the unfairness of this hearing be properly addressed to the Governor in the first instance? Assuming that the Governor decides that you are right, that you didn't have a fair hearing before the officer that he appointed to conduct the hearing and he decides not to remove him, that is it, isn't it?

MR. YOUNG: That ends the matter, that is true. But the Governor has in his letter attached to the answer given

the Probate Judge, who is one of the defendants here, certain discretionary powers. We have argued this same matter before the Probate Judge and he has determined that he should go ahead.

I am concerned about such record as I may be able to present to the Governor. If the Governor of the State of Michigan is not conducting the removal hearing he is taking it from the transcript in the nature of a referee. There will be perhaps two or three thousand pages or more of testimony. I cannot expect the Governor of the State of Michigan to read and analyze each of those pages. He will be bound to rely somewhat on his advisor. I do not know how much time he will give me.

I merely am stating at this point that from the standpoint of the concept of the judicial processes of the United States and of this honorable court that we are not in such a great emergency, certainly not to equal the Pearl Harbor situation, where that there would be any harm in delaying the ouster or removal proceeding until such time as the State of Michigan will set the criminal proceeding for trial, and then all of the grand jury secrecy and everything ends and I must proceed.

And that is a matter of what? They may set the trial merely by the issuance of a notice. But I cannot control that. I find myself on the other end, and I find that it is necessary for me, when I get to the Governor, to have a record there the same as I would be before your Honor.

JUDGE LEDERLE: Well after you have said all that, you are right back to where you started from. You are afraid that the Governor may act in violation of the plaintiffs' constitutional rights.

MR. YOUNG: That's right. And I think under the three-Judge court this court has the right to assume that I may have, because of those fears of irreparable damage and injury, the right to stay or an injunction which would delay that until such time as the criminal courts in the State of Michigan, particularly the county of Wayne, may move this indictment to a trial, which they can do merely by the prosecutor and assignment clerk or the Attorney General or whoever is handling it sending out a notice for trial.

JUDGE LEDERLE: Have you asked for a trial?

MR. YOUNG: Yes, I told them before Judge Conlin on January the 9th, I told them I was ready to go to trial, and under the Constitution of the United States that we are entitled to a speedy and impartial trial by jury. We are ready to go to trial. We have some preliminary matters of arguing a motion to quash and it may be argued at the start of the trial and we may proceed. And then all of this is obviated and my problem of witnesses becomes easy. The grand jury secrecy from these witnesses disappears. I may have the right as counsel to talk to them and to find out what their story is going to be.

And why I came here is that I am trying to come here three or four weeks before I find myself involved with two or three thousand pages of testimony and find myself in a situation where now somebody refuses to testify and I can't properly present a record to the Governor. And then it is true I must go to the Governor. But that costs the complainants here thousands upon thousands of dollars, and will cost the State of Michigan thousands upon thousands of dollars, and we are back right at the same situation that we may assume will occur and will exist, which is before this three-Judge court this morning.

JUDGE SIMONS: Now have you finished your attack upon this motion to dismiss?

MR. YOUNG: Yes.

JUDGE SIMONS: We will hear from the Attorney General in behalf of the State.

MR. OLDS: May it please the court, we have filed in behalf of all the defendants a motion to dismiss, and accompanied that with an exhaustive brief supporting our position.

The most important part of the motion to dismiss is that which relates to the issue of lack of jurisdiction on the part of this court to entertain this bill of complaint.

In the fore part of the brief we have traced the history of the grand jury statute and the decisions. We have also cited many cases involving removal proceedings, which have been passed upon by our Supreme Court.

And right at this point I would like to say, in answer to my brother, that our State procedure in our State courts does provide an ample remedy for reviewing removal proceedings. That is indicated by the fact that we have listed at least twelve cases or more, in which our court reviewed removal proceedings, in some instances supporting the decision and in several instances upsetting the decision that was made by the lower, original body.

But let us turn to this basic question, jurisdiction. And I would like to discuss with your Honors three cases that are decisions of the Supreme Court of the United States. These cases begin on page 21 of our brief.

The first one is In Re Sawyer. This case arose out of the action of the mayor and common council of the City of Lincoln, Nebraska, against a police judge. During the pendency of the removal hearing before the mayor and common council of that City against this police judge, by the name of Parsons, he went into the Federal District Court and secured a temporary restraining order restraining the city officials from proceeding with the removal proceedings. For some reason not explained in the opinion those officials ignored the court's restraining order, and proceeded with the removal hearing and removed Mr. Parsons and appointed someone else in his place.

Thereupon the police judge went down to the district court, called the circuit court there, and secured an order to show cause for contempt, and on the hearing of that contempt the Federal judge found the defendants,—that is the mayor and the common council,—guilty of contempt and turned them over to the custody of the marshal.

Thereupon Mr. Sawyer, who was one of the—I think he was the mayor—sought a writ of habeas corpus, and it was on that writ that the matter came before the United States Supreme Court.

The Court reviewed the whole history of the equitable jurisdiction of the Federal Courts as well as the State Courts, and determined that the District Court had no jurisdiction, had no power, had no authority even as much as to issue the restraining order, or even to entertain the bill, and therefore released the mayor and the common council on the writ of habeas corpus.

I need not review the words that were used, but it is to the effect:

"Our holding is that equity does not as a general rule have jurisdiction to enjoin the removal of a public officer."

Then the next case that came before the United States Supreme Court was the White vs. Berry case. In that case a Federal officer was involved, an employee of the Treasury Department. And there again the officer sought to be removed tried to secure a restraining order from a Federal District Court, and in that case the United States Government itself contended that the equitable powers of the Federal District Court did not include those of interfering with removal proceedings, and incidentally prevailed in that contention, because the court referred back to the Sawyer case and held that a Federal District Court had no jurisdiction, no power, to in any way interfere with the conduct of removal proceedings of a Federal officer.

The next case is Walton vs. The House of Representatives of the State of Oklahoma. There the House of Representatives was acting as prosecutor for impeachment of the Governor, before the Senate presided over by the Chief Justice. And during the removal proceedings the Governor tried to get an injunction from the Federal District Court, —and I might say, your Honor, that in all these cases all the issues and the defenses that I have heard this morning were urged and raised in these cases, every one of them: the violation of the Federal Constitution; the violation of due process; the right to a jury trial; the Fourteenth Amendment, and so on. And there again the Supreme Court of the United States in an opinion that was only a paragraph long referred back to the Sawyer case and said that the District Court rightfully in that case denied the restraining order and denied the injunction.

Now we come up to the very late case of Wilkowski,—

Anthony Wilkowski recently was elected to the Senate of the State of Michigan. He was denied his seat by a vote of the Senate because of a felony conviction that had been made against him some years back. He sought to review that by attempting to get our Supreme Court to issue a writ or mandatory injunction directed to the Lieutenant Governor, requiring the Lieutenant Governor to administer to him the oath of office. And that of course was denied and he appealed directly to our Supreme court, to the United States Supreme Court.

JUDGE LEDERLE: Mr. Olds, aren't you talking about all matters now after the Governor had acted?

MR. OLDS: No, your Honor; in the Sawyer case they sought and secured a restraining order while the proceedings were in progress. The same thing applied in the White vs. Berry case. The Federal Officer sought an injunction to stop the proceedings. And the same thing in the Walton case against the House of Representatives; while the proceedings were on he sought an injunction—exactly what is being attempted here.

JUDGE LEDERLE: Did the court grant it?

MR. OLDS: Not in the Walton case they didn't, nor in the Berry case. In the Sawyer case the District Court granted it and then brought him in for contempt for violating it, and then the Supreme Court of the United States released them on habeas corpus because the district court had no jurisdiction to even issue it.

JUDGE LEDERLE: In other words, your authorities that you are citing add up to the fact that the Federal Court has no authority to enjoin the Governor from con-

ducting an investigation for the purpose of determining whether an officer should be removed.

MR. OLDS: Exactly, and that rule, your Honor, not only applies to the Federal Courts, it applies even to the State Courts. If these people had gone into a State court, into our court, and sought an injunction the same rule would have applied there, because all you have to do is read the citations that we have here.

JUDGE SIMONS: There has been a recent Illinois case cited to us. I didn't quite follow what happened there.

MR. OLDS: I am familiar with that. That is Doud vs. Hodge.

JUDGE SIMONS: What happened there?

MR. OLDS: Now we have to distinguish here between cases where people seek to redress proprietary rights or even personal rights as against cases in which public officials are concerned with their removal or non-removal.

In the Doud vs. Hodge, the State legislature of Illinois had passed a law licensing the business of discounting checks or of cashing money orders. And in that statute they had exempted the Western Union and the various other established organizations that issue money orders. Mr. Doud was just an individual that did that business. And he claimed that that statute violated his constitutional right of equal protection that is guaranteed him under the Constitution. But remember he was a private citizen.

JUDGE SIMONS: He was not an officer.

MR. OLDS: He was not an officer. He was trying to

vindicate a private property right. And we are not claiming that the Governor of our state can trespass on a person's property and say that the person whose property it is is powerless to seek remedies. That is not what is involved here. What is involved here is an attempt by these people who are public officials to stay the hand of the Governor in doing his constitutional duty in conducting a removal proceeding.

JUDGE SIMONS: That removal proceeding has not been completed.

MR. OLDS: It has only gone, your Honors, up to the stage of where no testimony has yet been taken because of a multiplicity of motions.

JUDGE LEDERLE: Mr. Olds, just a moment. All that they are asking now is not to restrain the removal but to restrain the investigation.

MR. OLDS: Well it is a little more than that, your Honor.

JUDGE LEDERLE: Well is it?

MR. OLDS: Yes, it is a little more than that, more than an investigation. You see under the grand jury law the grand juror is given two types of powers; he is given the power to indict or they call it a warrant; he can issue a warrant; they don't use the word "indictment"; he can issue a warrant charging individuals with the commission of crime and cause their apprehension. And from then on the case proceeds as if the warrant had been issued by a justice of the peace. He has an additional power, and I trace the history of that power in our brief, how it arose.

JUDGE SIMONS: Well tell us what it is.

MR. OLDS: To make findings involving misconduct on the part of public officials; to send those findings to the body who has the authority to remove that public official. That finding then merely takes the place of a citizens' petition for removal. Removal proceedings ordinarily are initiated by citizens who file affidavits and what not showing misconduct with the Governor if it is his jurisdiction or with whatever body it is that can remove him. This statute merely substitutes the grand jury findings for the citizens' petition.

When those findings are sent to the Governor they are simply charges. He has to hear them, or he can ignore them if he wants to; he can get the findings and then he can ignore them. Or he has the right to set them down for hearing. Then it is up to us, the Attorney General or the Prosecuting Attorney, depending on whom he designates—he can designate either the Attorney General or the Prosecutor; or he can designate a Probate Judge to hear it or he can designate a Circuit Court Commissioner to hear it. All we do then is present the evidence to this official whom he has designated and then we secure that evidence and we summarize it and send it to him And then he can give the respondents a hearing if he wants to before himself if he chooses.

JUDGE SIMONS: Now you have outlined the process, but at what stage is it now?

MR. OLDS: The stage now, your Honor, is that the Probate Judge appointed here has delayed the taking of any testimony.

JUDGE LEDERLE: Well Mr. Olds, if you will let me answer that and see if we can reach some agreement. The stage as I see it, Judge Simons, is that the complaint has

been filed and the Governor has ordered the Attorney General to proceed with the investigation. Am I right?

MR. OLDS: The presentation of evidence, if that is what your Honor means.

JUDGE LEDERLE: Yes, sir.

MR. OLDS: The presentation of evidence. He cannot remove purely on the findings. That has been held in the Macomb case. You must have more than just the findings. But we must then satisfy him by evidence sworn to before the person he has appointed to hear it that the charges are—

JUDGE LEDERLE: That is what you would be doing right now?

MR. OLDS: That is what we would be doing right now.

JUDGE LEDERLE: You would be gathering evidence.

MR. OLDS: That's right. And the removal proceedings have not yet—

JUDGE LEDERLE: Don't spoil it. You said you were gathering evidence.

MR. OLDS: Well we are more than just gathering evidence. We will present evidence.

JUDGE LEDERLE: You will record it by transcript.

MR. OLDS: That's right. The function of the Probate Judge is merely to swear the witness, take the evidence, certify to the transcript and send it to the Governor. Now we feel, your Honors, that in view of these Supreme Court

decisions which our research reveals have been in no way tampered with by any subsequent decision of the Supreme Court of the United States—and my brother cites none—that we here urge that this court has no jurisdiction to entertain this bill of complaint whatsoever.

Of course, before we get into the doctrine that the Governor is a coordinate branch of the Government; he is an independent branch of the Government. The case which they cite, the Coffey case which they cite, in which our Supreme Court refused to review by certiorari the removal action of our Governor and thereby indicated that they don't have any remedy in our courts, is misconstruing the whole problem.

The Supreme Court of the United States pointed out numerous remedies that are provided on the law side: quo warranto; prohibition; information in the nature of a quo warranto; certiorari—all those are available depending on the nature of the case to review removal proceedings. And they have been utilized in our own courts time after time.

Now the minute that our court refuses to review directly the action of removal of the Governor by certiorari, because that it felt that he is an independent branch of the Government—and he is certainly; our court has no business reviewing his action any more than he has of reviewing the action of the Supreme Court or the action of the legislature—but that doesn't mean that there is no remedy.

If the Governor in this case decided after he heard this whole matter to remove—

JUDGE LEDERLE: Mr. Olds, let us see if we can't get this straightened out now. We are not here considering a removal by the Governor, are we?

MR. OLDS: That's right.

JUDGE LEDERLE: Why can't we stick to the proposition as to whether this court has a right to restrain the Governor from investigating?

MR. OLDS: That, your Honor, has been fully covered, as I say, in these three cases, and the last one, as I say, being the one of Wilkowski, in which the Supreme Court of the United States did not even write an opinion; just turned it down on the basis that there was no substantial Federal question involved, because they had decided previously that the Federal courts in equity had no business interfering in any way with removal proceedings, either of Federal officers or of State officers. Consequently there was no need for them to write an opinion at this late date.

JUDGE LEVIN: What do you say to Mr. Young's argument that there is no adequate State process to guarantee due process in your proceedings, due process under the Constitution in your proceedings, to try this removal proceeding at this time, which in effect will not permit him to adequately defend the removal proceedings because of the pending criminal case?

MR. OLDS: I will answer it in this way, your Honor. It is basic that this court will not interfere with the functioning of a State court in the conduct of criminal cases and will not stay the hand of our criminal courts.

JUDGE LEVIN: I am not talking of a criminal case.

MR. OLDS: I appreciate that, but I preface it with that. He claims that his rights will be violated. Now he is merely projecting that his rights will be violated. He

merely thinks that they will be, when he comes to defend himself or his clients in the removal proceeding.

JUDGE LEVIN: He says that he cannot put his clients on the stand before Judge Conlin in the removal proceeding because it will jeopardize him in the criminal proceedings, and there is no adequate State process to protect him and guarantee him the protection of the Fourteenth Amendment, the due process clause.

MR. OLDS: Your Honor, he says that these witnesses refuse to take the stand. They have no choice as to whether they should take the stand. They can be subpoenaed, and when they are subpoenaed and put on the stand by him then we will find out whether they have the right to refuse to answer questions. Then is the time when we have got to determine,—not now.

They can't just say, "Well we won't testify"; therefore everything has got to stop. It would be an odd doctrine, indeed, your Honor, if all the processes of our courts would have to come to a halt just because some witness in advance proclaims to the world that he is not going to testify.

Now let us say that he is trying his criminal case, and he puts these very same people on the stand. Can't they still refuse to testify on the ground of self-incrimination? There will be no difference there. There are all kinds of situations where witnesses cannot be made to testify. One of them is self-incrimination. Another one is relationships between attorney and client; another one is between doctor and patient.

JUDGE SIMONS: Privilege.

MR. OLDS: These are privileges. Now are our courts

going to go out of business and refuse to hear cases because witnesses in advance come in and say, "We are not going to testify"?

JUDGE SIMONS: Anything further?

MR. OLDS: That is the argument we have, your Honor, on that issue. And there are no cases on it one way or the other. Both counsel for these complainants admit there is nothing on it, because I presume the idea is so preposterous that it never has occurred to any one to raise it.

And then on top of that, is this court going to stay the hand of a coordinate branch of Government, just on the allegation that witnesses who might testify for the official are going to keep their mouths shut and not testify? Is that sufficient basis to give jurisdiction?

We also raise, if the court please, the fact that under the Eleventh Amendment to the Constitution—but before I get to that I would like to disabuse this idea that is going around that a public office is a species of private property. Our court time after time in decisions that I have cited and in very late decisions that I have here, emphatically speaks out and says that public office is not private property. It does not come under the protection of the due process clause, despite the fact that some people have the idea that just because they have a salary attached to it, therefore there is a species of private property involved. Now that is the decision of our own State courts in interpreting our concept of what a public office is. A public office is a public trust. It is not private property at all.

So what is the private property that these people are urging that this court protect? There isn't any here.

And so did the Supreme Court of the United States in these cases that I have cited adhere to the doctrine there is no private property involved in public office.

Therefore we urge of course again that under the Eleventh Amendment this court is without jurisdiction.

The Eleventh Amendment, as you know, arose out of the great clamor that grew up shortly after the Constitution was adopted because of a suit that had been filed against the State in the Federal Courts, and it reads this way:

> "The judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another State or by citizens or subjects of any other foreign State."

"The judicial power"—that is the very word that is used in that part of the Constitution which creates the courts—"the judicial power".

To my mind there is a vast difference between jurisdiction and judicial power, although sometimes the two are sort of intermingled and confused.

Is this a suit against the State of Michigan? Of course, we have decisions that say that a suit against a Governor who is trampling upon people's private rights is not a suit against the State. That is the Johnson Oil Company case involving the Governor of Oklahoma and Texas, and so on.

But are we dealing here—is the Governor here trampling upon anybody's private rights? All he is doing is seeking to do his constitutional duties, namely, to hold and conduct

removal proceedings to determine whether these people should be thrown out of office. Isn't that a suit against the State of Michigan?

JUDGE LEDERLE: Mr. Olds, now let us stop a minute. We tried to get that straightened out a while ago. There are no removal proceedings pending against the officers before the Governor at this moment, and there will not be until he makes his report. Then he will decide whether he will conduct removal proceedings.

MR. OLDS: No, your Honor; I want to not confuse you; he is conducting removal proceedings.

JUDGE LEDERLE: What has he done?

MR. OLDS: So far nothing. He has not been able to so far.

JUDGE SIMONS: He has been restrained by a temporary restraining order.

MR. OLDS: That's right. There has not been one word of testimony taken.

JUDGE LEDERLE: But he has carried out the duties imposed upon him by statute.

MR. OLDS: That's right.

JUDGE LEDERLE: Directing you to proceed and selecting a public official to take testimony.

MR. OLDS: That's right. That is all we have done so far. And now we are stopped from doing it.

JUDGE LEDERLE: And nothing will happen until he gets that record and he reviews it, and if, as, and when you get to that you may or may not have a hearing. Maybe by that time your criminal case will be over, and the defendants will all be found not guilty and the problem will all be solved. Isn't this premature, in other words?

MR. OLDS: It is premature, and we raise that issue in our motion and in our brief.

JUDGE LEDERLE: Have you anything else?

MR. OLDS: I don't think so.

JUDGE SIMONS: Anything further, Mr. Young?

MR. YOUNG: Mr. Cavanagh in behalf of Mr. LaBadie has a few remarks in reply.

MR. CAVANAGH: May it please the court, my remarks will be necessarily very brief. I represent the complainant Francis LaBadie and my name is Cavanagh.

Just one thing struck me in regard to Mr. Olds' argument, his contention that this is a suit basically against the State and not against State Officers, and therefore is not cognizable by this Federal court. I contend your Honor that that is something which goes to the very merits of this action, and should not be raised on this motion to dismiss. And there are cases to the effect—I have to excuse myself for citing Corpus Juris Secundum. However, I noted it here—two Federal cases in regard to that point. And the rule says that in cases decided—I am quoting now from Corpus Juris Secundum page 933 under "Federal Courts":

"In cases decided before the Federal Rules of Civil

Procedure, 28 U. S. C. A., became operative, it was held to recognize that a contention that the Federal court is without jurisdiction of an action against a state officer for the reason that the action is in effect against the state should be raised by demurrer or other pleading in the regular progress of the cause and not on a motion to dismiss for want of jurisdiction nor should the court dismiss such an action on its own motion on grounds of want of jurisdiction."

"It seems however that if a suit directly names a State, therefore the court, it would appear, could do such because it is in violation of the Eleventh Amendment to the Federal Constitution."

And they cite for that the case of Sculley vs. Byrd, a case arising out of Michigan, 209 U. S. 481; and also Illinois Central Railroad vs. Adams, 180 U.S. 28.

Nevertheless the fact that the Eleventh Amendment does bar a suit against the State, I don't think there can be much question about the fact that it does not bar an action against various State officers for acting under an invalid statute or possibly acting in an illegal manner under a constitutional statute.

The point was raised here as to what the functions of this Probate Judge appointed by the Governor are and what duties he has, I might say that it has been determined in many cases and determined here too by Judge Conlin that this removal is a judicial proceeding and he is attempting to proceed in a judicial manner.

The question as to what his functions are—that is the very point, your Honor, or one of the points, I believe, that hasn't been exactly determined, what the procedures and

functions of this Probate Judge sitting as a removing officer or as an agent of the Governor who is the removing officer, are.

Some cases which have been raised in Mr. Young's brief which I have deigned to adopt illustrate this point that the review of the Governor's determination, or a review, may not be attacked by the Supreme Court. And they said in People ex rel. Sunderland vs. the Governor, 29 Michigan:

> "We cannot interfere with his discretion; we will not subordinate him to our process."

And they also said in Germaine vs. Governor Ferris that certiorari does not lie to remove the determination of the Governor of the State.

However, one point struck me which I would like to bring out, bring to the attention of the court, and that is the question of exhausting State remedies prior to appealing to the Federal Court for some type of relief.

The Doud vs. Hodge case has been discussed rather thoroughly, and there, of course, they said that there was no need necessarily to first exhaust State remedies before you could appeal to the Federal Court.

Now also there are two cases which I feel possibly would be in point. And it is a 1946 case called Hillsborough Township vs. Cromwell, 326 U. S. 620. And this was an action to have declared null and void certain state taxes on the ground that they constituted an illegal discrimination in contravention of various Federal constitutional rights. And the court held there that it was not bound to remit the complaint to a State court before passing on the issues involved, since it appeared, 1, which wouldn't be in point

here, but it appeared that the time had expired for these complainants to appeal to the local tax board. And I think more important, number 2, they found that the remedy under the State law was not adequate to protect the complainant's rights under the Federal Constitution.

Another point I would like to submit to the court at this time would be a case entitled Meredith vs. Winter Haven 320 U. S. 228, and the court there pointed out—and if the court will excuse me for just reading this sentence from this page for a moment—the court there pointed out that in the absence of some recognized policy or defined principle governing the exercise of jurisdiction conferred which would in exceptional cases warrant its non-exercise, it has from the first been deemed to be the duty of the Federal Courts to decide questions of State law whenever necessary to the rendition of a judgment, and that when such exceptional circumstances are not present denial of that opportunity to Federal Court merely because the answers to the questions of state law are difficult or are uncertain or have not yet been given by the highest court of the State, would thwart the purpose of the Federal judiciary.

It was also said that to remit the parties to State courts in such a case would penalize the plaintiffs for resorting initially to a jurisdiction to which they were originally entitled.

I submit also that a party, if some of the other jurisdictional requisites are met and a substantial Federal question, that a party cannot be denied the resort to a Federal Court for the protection of his rights because merely also a remedy might also be sought and obtained in State courts. And in substantiation of that statement I would like to cite to the court two District Court cases, one arising in Kentucky, another in Texas, Central Ken-

tucky Natural Gas Co. vs. The Railroad Commission of Kentucky, 37 Fed. 2d 938, and the Texas case being entitled Panama Refining Co. vs. Railroad Commission of Texas, 16 Fed. Supp., 289.

The United States Supreme Court in Lane vs. Wilson, 305 U. S. 591, said it was the rule and that barring only exceptional circumstances or explicit statutory requirements, resort to a Federal Court may be had without first exhausting the judicial remedies in the State court.

And the Doud vs. Hodge case certainly I believe substantiates that statement.

The case against the Governor of Indiana, Paul McNutt, called the Premier Pack Sales Corporation vs. McNutt, had to do with the State sales tax act. The court there briefly said that state officers were not entitled to a dismissal of suit to enjoin them from enforcing a state statute where the plaintiffs alleged constitutional rights were being violated by enforcement of a specific State act, since the determination of the validity of the act was required.

Now rather than take up too much time of the court's I would like to attempt briefly or succinctly merely to say this: that it is the plaintiffs' contention in this matter that the law surrounding the thing with which we are faced right now, the Michigan law, is so hazy and so ill determined because actually it has not been determined clearly, that therefore we are without a remedy in State courts and we are in front of this body appealing to this body for relief.

Now the question as to whether we can eventually—you can eventually grant relief I suggest is something which has no bearing upon the determination of jurisdiction. It

may be that after hearing full argument and more complete briefs and possibly testimony if the court desires testimony, you may then decide that we are not properly in front of the court because of the lack of a substantial Federal question, or that our constitutional rights have not been abridged. But I suggest to the court that merely because that might eventually happen that is not sufficient for this court to refuse to invoke jurisdiction at this time.

And all these cases which Mr. Olds mentioned, the Sawyer case in particular, and the other cases that he also mentioned—incidentally the Wilkowski case I think is hardly in point because there a State Senator appealed from a decision of his own legislative body, and I think it is very settled that the legislature has the right to determine its own rules for the seating of its own members. But nevertheless he cited that case. And the Sawyer case, and the Walton case, and so on. There it is different for one very important reason: the one fact exists in this case and that is the very reason why we are here, that did not exist in the other cases and it is this: we are not attempting to end the removal proceeding. We are attempting to restrain, as Judge Lederle put it, the presentation of evidence, the investigative process, until such time as our rights have been adjudicated in the criminal matter.

And I submit to the court that we have raised in our bill of complaint a substantial Federal question involving the constitutional rights of these complainants. I submit that because we have, that the court therefore should accept jurisdiction of this matter to determine this controversy on its merits and not dismiss.

Thank you.

JUDGE SIMONS: Very well. Anything further?

MR. FREED: If I may, I would like to address the court briefly.

JUDGE SIMONS: And whom do you represent?

MR. FREED: My name is Freed. I represent Mr. Elmer Korn, councilman in this case.

I recognize full well that this court is seriously interested and it is our bounden duty to show to this court a substantial Federal question.

May it please the court, Mr. Olds, the Attorney General, has summarized quite clearly the proceedings under which the removal proceedings in this case were commenced. I think I can augment that somewhat by stating that the so called one-man grand jury law, which originally was intended as an investigatory proceeding, provides among other things that the grand juror after being appointed shall investigate. And it also provides, among other things, that the grand juror subjects each person whom it investigates, whether it is a voluntary witness or a subpoenaed witness brought there by the grand jury, to secrecy punishable by contempt of court, which was before the Supreme Court in the Murchison case and in the other cases.

Now we must presume that we are acting ordinarily and properly, that the grand juror made an exhaustive search into ever facet, every angle, every feature, connected with any accusation or any information arising out of any conduct in Ecorse for which the defendants in the criminal case are indicted or complained of.

We must therefore likewise conclude as a final conclusion or analysis, that there are no witnesses whatsoever who are not under oath of secrecy, or that there are very few.

Now the secrecy is imposed upon them by the grand juror. It is not something that they, those witnesses, can waive or it isn't anything personal that would be ordinarily the case under the Fifth Amendment with reference to the indictees. It is strictly within the province of the grand juror.

Now we are faced with a removal proceeding which commenced after a criminal so called indictment or warrant was issued by the one-man grand juror, based upon a so called finding made by the grand juror, which was not verified, not supported by any synopsis of any evidence upon which the same was based, doesn't apprise the accused or the defendants or the respondents or whatever you want to call them of any of the allegations against them except this: that during the course of argument in the briefs in this case the Attorney General said in answer to a demand for a bill of particulars in the removal proceedings, "You don't need it because each one of you defendants had an extensive preliminary examination in the criminal proceeding."

Now we are talking about the secrecy of the witness. I am not going into whether or not a co-indictee may or may not reveal anything that took place or any of the testimony or matters which may have taken place before the grand jury that he is called upon to be indicted, because that is automatically covered by a witness in this case, and Mr. Young has covered that.

I will go even further, however: Mr. Olds stated among other things that the Governor may do or may hear us or may after getting his testimony before him or a synopsis or whatever he may, he says, allow us a hearing up there.

That is the very kind of thing which we are objecting to in this case.

These proceedings, the removal proceedings, whether they are two-fold or one-fold, or whether they arise or are born out of the one-man grand jury proceeding or the removal statute which was set up in the Michigan statutes based on the 1908 constitution, do not set up any standards whatsoever, may it please the court. We don't know what rights we have, as Mr. Young said. Do we have a right to trial by jury? Do we have a right to counsel? Do we have the right to refuse to take the witness stand if we accused or respondents are called by the Attorney General? Does the Attorney General have the right to subpoena our clients in a removal proceeding against them to place them on the stand?

We don't know. It has never been decided, and nobody knows, except this: It has been decided in Michigan under a line of cases that this is a quasi judicial proceeding. By the Governor's condescension he has written a letter to Judge Conlin, the Washtenaw County Probate Judge, and he says:

"You have a discretion as to continuance."

Is that the kind of law, is that the kind of proceedings, which we Americans have countenanced? Or are we entitled to be safeguarded by a standard surrounding us setting forth what the people's rights are, what the defendant's rights are or the respondents' rights. That, your Honor, is a very important question.

I go even further, may it please your Honor: the one-man grand jury law so called in Michigan provides among other things that there is an oath of privilege, that the counsel or

attorneys may be available to any witness brought before a grand juror, and that that attorney is privileged, and his client, the witness, may communicate with his attorney so long, it says, as there is no unavoidable delay in the proceedings before the one-man grand jury. And then it goes on into another section of the same statute that provides, among other things, that a Doctor, Clergyman and the lawyer may or is privileged as to all matters communicated to him by his client in the matter of investigations in the grand jury, in such proceedings and in such matters as may be necessary for the defense and proper representation of the witness before the grand jury.

Now in this case, may it please your Honor, I represent Elmer Korn who was before the grand jury. He has of necessity revealed certain matters to me and in which matters I am privileged. By my joining in this very complaint before this court in what I as an attorney believe to be a proper and legal defense and a proceeding for my client's benefit, I am in violation of the one-man grand jury law in Michigan. That means, may it please your Honor, that the one-man grand jury law which makes it mandatory on the Governor to proceed, has restricted my client's right to counsel.

JUDGE SIMONS: Now wait a minute. You are going rather far afield. We have here a problem as to whether this court has jurisdiction to interfere by injunction against a proceeding which is still going on except for the fact that there has been a temporary restraining order, or whether these plaintiffs should be relegated to their rights under State law, and an interpretation of the State law and the constitutionality of the State law. We are not, at present at least, concerned with these things, whether you violated your privilege or violated the one-man grand jury law.

MR. FREED: Well, may it please your Honor, I merely mention that—and I think it is important that this court be apprised that these two laws are melted one into the other, and a removal proceeding is born out of the grand jury law.

And may it please your Honor further, that there is no skeleton for procedural due process in the removal proceeding; and that in effect there is no provision as to right of counsel. We don't know whether we are entitled to a trial by jury in the removal or whether or not we can be subpoenaed or whether we can subpoena. We know so far that everything is privileged in the hands of the people or the Government or the Attorney General in this case, and the proceeding as a "by your leave" proceeding instead of a statutory and proper rightfully conducted proceeding.

We have so far asked Judge Conlin's rulings as to the type of proceeding that he has before him and he says, and the record will bear me out:

> "It is a quasi judicial proceeding as far as I know. I don't know what that means in the State of Michigan by virtue of the decisions of the Michigan Supreme Court."

But he says:

> "As far as I am concerned", he says, "you will be entitled to all the protections of the rules of evidence."

May it please your Honors, that in and of itself is a condescension on the part of a hearing officer. I contend that that is a violation of due process. It is a bill of attainder because it sets up no judicial review whatsoever. It does not provide for a proper hearing, but it provides for a hear-

ing that is permissive to grant us certain protections under the Constitution or not, and from those, may it please your Honors, we can review only if it is arbitrary, if the determination of the Governor, which we are not concerned with now—we are not concerned with whether the Governor finds us subject to be removed or not; we are concerned with the judicial due processes to which we are entitled in a removal proceeding, which is not provided by the laws of the State of Michigan and to which we are compelled to answer in a removal proceeding whereby we subject ourselves to being doubly harassed in the same kind of proceedings as a criminal as far as we know; but in the criminal, may it please your Honors, we can defend because there we do have the skeleton of due process provided for us and laid out.

Before I finish—and I don't intend to go long—your Honors in the *Quicksaw* case in Michigan, which was a review of the Michigan Supreme Court decision held some time in 1947 or 8—I don't remember the date of it—that summary justice in Michigan is not due process of law. It happened to be a murder case. Maybe your Honors remember it. I am not going to summarize it.

The Supreme Court of the United States held in the Shelley vs. Kramer case, and the Sykes vs. McGee case, that even though the individuals had the right to contract, to restrict certain restrictive covenants in reference to Colored people buying or purchasing, your Honors held that that is a contract that still exists; that was a private contract. But you held that that was a violation of due process.

Now I merely point out to your Honors that the same thing is happening here. Procedural due process is important. Whether the statute itself is constitutional or unconstitutional, whether in the final analysis the Supreme Court

or the court on final hearing will say that this court has no jurisdiction, it behooves this court to have its finger to the pulse of the times, and even though it may be upsetting the traditions, sometimes hidebound traditions, the urgency of this situation requires that this court at least for the time being stay these proceedings and continue them for such a time until after a criminal hearing and determination in the principal criminal case, and after a final hearing before this court on the merits feels that this court has no jurisdiction then that is a matter to be determined then as my brothers have so ably argued.

Now one other thing to show the nature of the constitutional questions in addition to those mentioned, the punishment on removal by the Governor provides among other things that no person so removed may hold public office for three years and he can't have any position of trust or be a guardian or an administrator. Well our laws provide or the Constitution provides that every one shall have a right to run for office as far as I know. Maybe it doesn't say so in so many words but that is our inalienable right which we have been so proud of. We have even said that a baby may be the President of the United States. But on that, your Honor, the fact that the witnesses have been—the field has been swept as far as witnesses are concerned. We have no witnesses.

I am going to end and ask your Honors if you feel that we are wrongfully before this court that you will permit us either to file memorandum briefs or give us a further stay so that we can prepare for such other action as may be necessary.

JUDGE SIMONS: Anything further?

MR. GUEST: May it please the court, my name is Michael

Guest, and I represent Albert Buday. Because of the remarks that have been made by brother counsel my remarks will be very brief, because I think they have quite well covered the case, although I would like to submit this to the court, if I may. I think that we are here on equitable principles. We are asking for discretionary relief from the court, and I think that it would be proper for me to submit this thought, that at the present time, and for some time heretofore, there has been no indication that there is any present misconduct on the part of the petitioners, on the part of the officers of the City of Ecorse, those people whom the state of Michigan is attempting to remove. And in other words there is nothing urgent that they to be removed presently because of their present misconduct or their present fear of misconduct.

I do not exactly agree with Mr. Olds, my interpretation of his remarks being that the proprietary interest may be more important than the human interest and the individual rights of any citizen.

I interpret the remarks of Mr. Olds to mean that if in the event we feel that we would be compelled to incriminate ourselves in testifying at the removal proceedings we don't have to testify there. We may take the shame of removal or the stigma of disgrace.

I interpret the remarks of Mr. Olds to mean that in the event we may not be able to receive the assistance of co-indictees or other persons who have been before the grand jury and have been sworn to secrecy, we are not entitled to equal protection of the law. We just can't have that testimony, and we should again permit the Governor to remove us and give us the stigma of removal, of misconduct in office as officials.

I don't think that the court will agree with those principles if those are the principles that Mr. Olds has been stating to the court. I do believe that we in our bill of complaint—that we have stated a Federal question. I think we are entitled to the equal protection of the laws, and indirectly we are entitled to the protection of the Fifth Amendment through the Fourteenth Amendment, that is, we are entitled not to be compelled to incriminate ourselves.

There is no question in my mind, and I believe that there will be some thought in this court's mind also, that this may be an attempt on the part of the Attorney General's office to compel us to come into court and divulge our defense in the criminal case. In other words, I think the equitable principles would mitigate in our favor.

There is no showing made now that there is any urgency or necessity of the immediate proceedings in the removal, because of the misconduct or alleged or feared misconduct of these petitioners. I believe that due to the fact that there is no such urgency that a proper application of the law and due process would require the State of Michigan to first proceed with the criminal case and that there be a determination there, that we may be given equal protection of the law, that we may come in, after the criminal case is over with, on the removal proceeding and at that time we may take the stand ourselves, and there will be no self-incrimination. And we may be able to procure such witnesses who are not now definitely—I think it is obvious who are not now available to us, because of the grand jury proceedings.

I think other than that I think our views have been very adequately stated by preceding counsel, and I don't think I should be accused of any repetition.

JUDGE SIMONS: Very well. Anything further on the part of the State or its officers?

MR. SULLIVAN: May it please the court, my name is Joseph Sullivan, Deputy Attorney General, and I only wish to comment upon one remark made by counsel, which I believe should not go uncontradicted on this record.

Counsel suggests to this court that any witnesses that might be available to the complainants in this case for their defense in a removal proceeding would not be able to testify to that defense in the removal proceeding because of the oath of secrecy before the grand jury. I submit that there is nothing in the Michigan statute pertaining to grand juries that would give rise to that inference.

Now is it a fact that any witness under subpoena before a tribunal acting in a removal proceeding can refuse to testify on the ground that he has been before a grand jury and sworn to secrecy? The court is a proper place to testify to the pertinent testimony taken before the grand jury, and if it pertains to malfeasance in office or other grounds for removal the forum provided in this instance, that is the Probate Court, is the proper place for that testimony to be divulged.

I have nothing further to add except for that statement.

JUDGE SIMONS: Very well. If there is nothing further, the case is submitted, and you will be apprised as to the action of the court upon the motion to dismiss.

If it is not dismissed we will advise you as to what further light the court would like to have on the merits.

CERTIFICATE

I hereby certify that I have recorded by shorthand the proceedings had in open court in the above-entitled matter, on Tuesday, January 29, 1957, before the Honorable Three-Judge statutory Court, and that the foregoing transcript, consisting of sixty-eight typewritten pages, is a true and correct transcript of my said shorthand notes, to the best of my skill and ability.

Dated at Detroit, Michigan, February 4, 1957.

Earl T. Chamberlin
Official Court Reporter

APPENDIX 2

UNITED STATES OF AMERICA
IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

WILLIAM W. VOISINE, FRANCIS LaBADIE, ALBERT BUDAY and ELMER KORN, Complainants, vs. JOHN W. CONLIN, G. MENNEN WILLIAMS, THEODORE R. BOHN and THOMAS M. KAVANAGH, Respondents.	No. 16338.

Proceedings had on Motion to Dissolve Temporary Restraining Order, before the Honorable Charles C. Simons, Chief Judge of the Circuit Court of Appeals, the Honorable Arthur F. Lederle, Chief District Judge, and the Honorable Theodore Levin, District Judge, sitting as a statutory three-judge court, at Detroit, Michigan, on Friday, March 8, 1957, at ten o'clock in the forenoon.

APPEARANCES:

MR. FRANCIS K. YOUNG,
Appearing for William W. Voisine

MR. JEROME P. CAVANAGH,
Appearing for Francis LaBadie

MR. MICHAEL A. GUEST,
Appearing for Albert Buday

MR. JOSEPH FREED,
Appearing for Elmer Korn

MR. JOSEPH A. SULLIVAN, Deputy Attorney General,

and

MR. NICHOLAS V. OLDS, Assistant Attorney General,
Appearing for the respondents.

MR. ROBERT TAYLOR, JR., Assistant Wayne County Prosecutor,
Appearing for Honorable Theodore R. Bohn, Judge of the Wayne County Circuit Court.

Detroit, Michigan
Friday, March 8, 1957,
10:00 o'clock A.M.

PROCEEDINGS

JUDGE SIMONS: Will the Clerk call the case that has been set for this morning.

(Whereupon the clerk called the above-entitled case.)

JUDGE SIMONS: Who speaks for the movants?

MR. OLDS: May it please the court, The Governor of the State of Michigan and the Attorney General have filed this motion to dissolve the temporary restraining order that was issued by this court to enjoin the Governor from continuing with the holding of the removal proceedings as against these complainants.

The restraining order originally, of course, was issued by Judge Levin, and thereupon we filed a motion to dismiss the bill of complaint, which was heard before your Honors on January 29th. As a result of that hearing this court entered an order in which it decided not to determine the motion to dismiss, not to determine the application for a temporary injunction, but rather to delay determination of those issues, and in the meantime continued its temporary restraining order. Therefore, so far as the Governor of the State of Michigan is concerned, the continuance of the restraining order was in substance and effect a granting of a temporary injunction.

Nevertheless, so that there be no misunderstanding, and that in case of an appeal there be a full picture of this controversy before the appellate courts, we thought it wise to file a motion at this time to dissolve the temporary restraining order, so that this court would have the benefit of hearing such a motion and deciding on it.

Now I am going to read the motion to dismiss which we have filed.

JUDGE SIMONS: Well wouldn't it save time to just tell us the substance of it?

MR. OLDS: Well the first part of the motion, of course, your Honor, deals with the lack of jurisdiction. We feel that if a court lacks jurisdiction it certainly should not issue any orders of any kind until that question is decided. So the first part of the motion, as I say, deals with that problem. And we insist that the non-action on the part of this court on defendant's motion to dismiss, then coupled with the restraining order of February 1, 1957, results in an unconstitutional interference on the part of the Federal judiciary in the political affairs and responsibilities of the Governor of the State of Michigan, and those affairs have to do with the disciplinary authority which he has over the municipal and local public officials.

And then we insist, if your Honors please, that such interference with the duties and prerogatives of the Governor of the State of Michigan is inimical to the public good and interest, because the Governor is thereby prevented from determining after hearing whether said public officials should remain in office and be allowed to conduct the public affairs of the municipality.

We thought, your Honors, that it would be enlightening if we brought before you a graph of what is here involved. I am afraid possibly we didn't stress too much the complexity of the situation. We have here under indictment the Mayor of the City of Ecorse; we have under indictment for conspiracy—

MR. YOUNG: Pardon me a moment, Mr. Olds; would you

mind being on the other side so I might see what you are doing.

MR. OLDS: I am sort of right handed but I can do that.

MR. YOUNG: Then I can follow you.

MR. OLDS: We have under indictment three of the six members of the common council. The charter of the city of Ecorse provides that the Mayor functions as a member of the Council. He votes with the Council. He doesn't veto their action; he merely is a member of the Council on any matter before the Council. Consequently the three indicted officials plus the vote of the Mayor absolutely control the policies of this municipality while they are still under indictment.

Another phase of this problem, if the court please, is this which is somewhat neglected in the uproar of affairs: the Mayor of every city of our State functions as a member of the Board of Supervisors of the County. In the City of Detroit the Mayor and members of the Council and many other appointees of the Mayor function as members of the Board of Supervisors to the extent, if the court please, that the policies of Wayne County are practically controlled by the city officials of the City of Detroit.

Now on the Board of Supervisors there is every supervisor of every township automatically and then, as I say, the Mayor of every city plus other officials depending on the population of that city—

JUDGE SIMONS: Well the members of this court are all citizens of Wayne County and we have a fair understanding of the structure of the County Government.

MR. OLDS: I wanted to point out this thing, your Honor, because this gentleman, Mr. Voisine, as a member of the Board of Supervisors votes on the very question of whether the judiciary of the County of Wayne should function, on whether funds should or should not be appropriated for the conduct of this grand jury.

And that is how serious this thing is.

JUDGE SIMONS: Will you get down—I was going to say that perhaps it is an anomalous situation, but we sit here as a court of equity, and these complainants here claim that due process would be denied them, not because the Governor has no authority to remove an officer under certain procedures, but because you have pending in a certain court a criminal case against these same complainants. And as I understand the position of the plaintiffs in the principal case it is that a removal proceeding prior to the trial of the criminal proceeding will constitutionally affect their rights in the criminal proceeding, because you cannot keep it out, because the burden of proof materially differs in the removal proceeding from the criminal proceeding, and that they are entitled to be free from extrinsic influences when they go to trial, which they are willing to do. That is the situation as it presents itself here.

MR. OLDS: Yes, your Honor, but may I suggest—

JUDGE SIMONS: At least that troubles me and perhaps troubles some of the other members of the court.

MR. OLDS: May I suggest, your Honor, that every defendant in every criminal trial has to face some realities, he has to face the reality of even publicity of his indictment, publicity of his examination. Does the fact that possibly

that publicity might injure him in some way, does that deprive the court—

JUDGE SIMONS: But you have a different situation than publicity, mere publicity. If these removal proceedings go on and result in their removal you will have them coming into a criminal court already tarred with a formal proceeding by State authorities that they somehow or other violated their oaths of office or have been guilty of crimes and misdemeanors and all that sort of thing, and they do not come in free of that influence.

MR. OLDS: Well your Honor, when I become a public official, isn't that the risk that I run? Do I have the right, as a public official, to sit in office and exercise the powers of that office protected even by the injunction of a court?

JUDGE LEVIN: But even public officials have the benefit of Federal Constitutional guarantees.

MR. OLDS: Not to the extent of a private citizen, your Honor.

JUDGE SIMONS: Why not? If they are indicted for a criminal offense don't they come into court with the same presumption of innocence and with the same rule of the burden of proof on the Government of the State that they must be convicted by proof beyond a reasonable doubt?

MR. OLDS: Are we to assume, your Honor, that a jury will pay attention to what has gone on outside of the court room? Aren't these people when they are tried going to be tried by the evidence presented to that jury and only by that evidence? Aren't they amply protected by the charge to the jury, by the atmosphere of the courtroom? They only can be tried according to court procedure? The jury has no

right to consider any other thing besides what appears before them in that courtroom.

JUDGE SIMONS: And of course they also have the right to be freed from any inferences that may be drawn from other proceedings such as removal proceedings, when they go to trial in a criminal case, are they not?

MR. OLDS: Well freed to what extent, your Honor? Freed to what extent? Are we going to say that the Governor's hands here must be shackled, or are we going to say that he may not protect the constitutional rights in these hearings? Are we going to assume that he will violate their constitutional rights in these hearings?

JUDGE SIMONS: What has that to do with it?

MR. OLDS: Because, your Honor, the purposes of restraining the Governor is, as they say—that is their position—

JUDGE SIMONS: Well let us get down to realities here. There is on the face of these papers and on the face of the arguments that were made here before a reasonable inference that the State wants the benefit of this removal proceeding before it begins its criminal trial in the County courts.

MR. OLDS: Your Honors, the Governor of the State of Michigan has certain responsibilities. He is the third branch of the Government. He is an independent branch of the Government. He has responsibilities imposed on him by the Constitution and the laws of this State, and he would be derelict in his responsibilities if he did not proceed as is required by law.

JUDGE LEVIN: Of course, the Attorney General has responsibilities, too, and he is a defendant in these proceedings before this court. A criminal action is pending which the Attorney General can try. And he knows that these plaintiffs here are obliged to defend themselves in the removal proceedings if they are to have any success there. They must do that while they are still under indictment, and as I understand it the criminal case is ready for trial.

MR. OLDS: Your Honor, that is over-simplifying the problem.

JUDGE SIMONS: Well doesn't it boil down to that very simple thing, as to whether these men will be prejudiced by a successful removal proceeding when they come to defend themselves in the criminal court?

MR. OLDS: In what way—I am at a loss to understand in what way they can be prejudiced. The jury has no right to consider that.

JUDGE SIMONS: Why not?

MR. OLDS: Because it isn't a part of the indictment. All that they are to consider is whether these defendants conspired to obstruct justice. The jury has no right to consider what the Governor did, what the removal proceedings involved, or anything of that sort. They have to decide the innocence or guilt strictly on the evidence before them, as introduced in our courts.

JUDGE LEVIN: You do not think that a jury would be influenced by the fact that argument may be made to it that this man Voisine was the Mayor of Ecorse and was removed by the Governor of the State of Michigan?

MR. OLDS: I doubt if we can make that argument.

JUDGE LEVIN: You don't think you can.

MR. OLDS: I don't think we can make that argument to the jury that they should find them guilty because ——

JUDGE LEVIN: I didn't say that. But when the Mayor takes the stand in his defense in the criminal proceeding, would it be inappropriate and improper under the rules of evidence to ask him if in fact he is not now Mayor of the City of Ecorse because of a removal proceeding?

MR. OLDS: We can ask Mayor Voisine if he ever was convicted of another offense. Are we going to refuse to try him because we can ask him that question? What difference is there between asking him, "Have you ever been convicted of any other offense," and asking him whether he has ever been removed from office?

JUDGE SIMONS: He might be able to answer your first question in the negative and he would have to answer the second one in the affirmative.

MR. OLDS: No, your Honor. I might inform the court he would have to answer the first question in the affirmative.

JUDGE SIMONS: Well I don't know anything about that.

MR. OLDS: We know those things. We cannot insulate, your Honor, every defendant from all extraneous influences. We can't come to the point where we are going to hold the hands of these defendants and act as nurse maids to them. It is not the function of a court of equity to do that, and I have ample authority here, all the decisions that say that a court of equity should not intervene, should not intrude

itself into the political affairs of a community nor should it intrude itself into the criminal prosecution of cases in a State.

I have here an excellent decision by Justice Frankfurter in which he outlines that problem in a New Jersey case where the defendants, who were being prosecuted in a New Jersey court, and the police officials had seized some contraband of some kind, and they were going to use it in that case as evidence. The attorneys for the defendants in the criminal case went into the District Court of the United States and attempted to secure an injunction to enjoin the police officers and the prosecuting officials from using that evidence in the criminal case. In New Jersey, if the court please, they do not have the exclusionary rule on the suppression of evidence; in our State we do. And in the Federal Courts we have it. But they tried to use the powers of the court of equity to assist them in the defense of their criminal case. And that is exactly what they are trying to do right here. They are using this court of equity to help them defend themselves in the prosecution against them by the State of Michigan.

And I would like to read what Justice Frankfurter said—

JUDGE LEDERLE: Wait a minute. I will have Mr. Chamberlin read back the statement you just made and see if you mean that.

MR. OLDS: Possibly in the heat of my argument—
(Whereupon the reporter read the last statement of counsel)

JUDGE LEDERLE: That is not involved here, is it?

MR. OLDS: Well what I mean, of course, is this, as the court has said, that if we continue with our removal pro-

ceedings that might prejudice their defense, so that the result is that this court of equity is aiding them.

JUDGE LEDERLE: Are you say that you want to make use of this hearing on the removal proceedings for the purpose of aiding in the criminal prosecution?

MR. OLDS: No; no indeed, your Honor.

JUDGE LEDERLE: Isn't that substantially what you said?

MR. OLDS: No, I don't interpret it that way. What I meant was this, that in the same manner as these people in New Jersey rushed into a court of equity and attempted to get an injunction to shackle the hands of the prosecuting officials from introducing this evidence in the State court, and thereby assist them in their defense in that court, these complainants are coming into this court and asking this court to assist them.

JUDGE SIMONS: No; what they are trying to do is to prevent you from using these removal proceedings to convict them.

MR. OLDS: That is exactly what they tried to do in this case, your Honor, because with this evidence introduced—

JUDGE LEDERLE: No; I have read that case and that referred to a criminal proceeding and not a removal proceeding.

MR. OLDS: Very well; but I want to make this point, your Honor: in the Sawyer case that we cited in our other brief, in that opinion the Supreme Court of the United States says that removal proceedings are analogous to crim-

inal proceedings and that the court of equity does not have any authority to interfere in criminal proceedings, and based its decision on the removal proceedings on the theory that even in criminal proceedings courts of equity cannot interfere.

In other words, it said that the two things are analogous; they flow from the same principle, namely, that a court of equity cannot interfere with the prosecution of criminal proceedings in the same manner that it cannot interfere with the removal of public officials. And it flows from the same principle. And that is why I cite this case, because we are dealing here with the very same principle that is applied to trying to enjoin criminal proceedings. And Justice Frankfurter indicated that if the court of equity were to intrude itself into things of this sort all kinds of troubles and difficulties would arise:

> "If we were to sanction this intervention we would expose every state criminal prosecution to insupportable disruption. Every question of procedural due process of law with its far flung and undefined range—(that is what we are dealing with here; they claim they are being deprived of their constitutional rights under the due process clause)—would invite a flanking movement against the system of state courts by resort to the Federal forum with review if need be of this court to determine the issue. Asserted unconstitutionality in the impending selection of grand jurors and petit jurors and the failure to appoint counsel and the admission of confession, and the creation of an unfair trial atmosphere—(that is what we are concerned with here, that the removal of these defendants, these plaintiffs, would create an unfair trial atmosphere)—in the misconduct of the trial court, all would provide ready opportunities which conscientious counsel might be bound

to employ to subvert the orderly effect of prosecution of local crime in local courts; to suggest these difficulties is to recognize their solution."

JUDGE SIMONS: Has there been any change in the practical situation since this court entered its order?

MR. OLDS: Not materially, because every defendant in this case has filed a motion to quash. On the other hand, we have filed mandamus proceedings against the Justice who refused to bind over one of the defendants. These motions to quash and the mandamus are being heard piece meal by Judge Fitzgerald. They are still hearing those motions.

It must be remembered that we have here about two dozen defendants, each one of them having filed these motions to quash. How soon those motions will be completed is problematical and how soon the case will proceed to trial after that we don't know.

JUDGE LEVIN: Have the plaintiffs been guilty of any dilatory practices in connection with the hearing of the motions?

MR. OLDS: I shouldn't say so since the hearing before this court.

JUDGE LEVIN: They have acted with speed and with fairness to the prosecution and with an attempt to have an early determination, would you say?

MR. OLDS: Well early in this sense, your Honor: these people come up for reelection in the fall. There is going to be an election in Ecorse in November, and we are here in March.

JUDGE LEDERLE: Well I do not think you answered Judge Levin's question. So far as I have examined the affidavits it would appear to me that at no time did any of the defendants ask for an adjournment or additional time.

MR. OLDS: I am not aware of any. Of course, I haven't handled that phase of it. But I am not aware of any.

JUDGE LEDERLE: In other words, the right answer to Judge Levin's question is that there has been no evidence of any dilatory practices on the part of any defense counsel.

MR. OLDS: So far as I know since the hearing before this court.

There is another phase of this thing here that might be interesting; here all the police commissioners are under indictment. There are five of them and four of them under indictment and they run the police force of the City of Ecorse. They appoint the chief of police, they appoint all the subordinate officers, and these three subordinate officers, Gillman, Lackey and Bobo, were suspended by the chief of police. He is not under indictment—Mr. Royal—and within a week or ten days after the suspension the Police Commission reinstated them.

Now I might say, your Honor, that we know that it is the usual practice that even the lowly cop on the beat, if he is charged with any misconduct of any kind, he is immediately suspended, and then pending his hearing he is not on active duty, because it would be subversive and would subvert the very ends of justice if a police official were allowed to continue to function while he is under a cloud. And yet here we have the whole Police Commission under a cloud and all their main officers under a cloud, and

even when they are suspended why the Police Commission reinstates them.

Now the Governor has no authority over this group.

JUDGE SIMONS: Let me ask you this, Mr. Olds: while formally this proceeding here is on a motion to dismiss, what it really amounts to is a petition to re-hear an application to set aside a previous order.

MR. OLDS: Well not exactly, if the court please. You will recall that we made a motion to dismiss the entire proceeding, the entire bill, and didn't concern ourselves at all with the restraining order. We assumed that this court would decide the motion to dismiss either one way or the other, either grant it or deny it. However, the court saw fit not to decide it and then on the other hand continued its restraining order. And we think that the court ought to consider the equities involved here, the balancing of the equities.

On the one hand we say there is doubtful jurisdiction. We have here tremendous public interest involved. We have a whole city government under indictment, and who, because the Governor is restrained from proceeding with his removal hearing, continue in office and continue to exercise public authority.

Now as against that what is there on the other side of the picture? On the other side of the picture is merely this possibility, this bare possibility that these removal proceedings might prejudice them in the trial of the criminal case.

This court has got to assume in that bare possibility that the court before whom they are tried may not protect them

adequately if these removal proceedings are continued. I certainly cannot assume, your Honor, that whoever tries this case in our circuit court, whatever Judge it is, he is not going to allow any reference (and we certainly as prosecutors will not make any reference excepting as it may become necessary by invitation of the defense), that these people have been removed from office. They will be tried like any other defendant in any other criminal case.

JUDGE SIMONS: All right. We get your point. Is there anything else?

JUDGE LEDERLE: Mr. Olds, coming back to Judge Simons' question, he asked you whether the situation was any different now than it was prior to the hearing, and in effect that you were asking for a re-hearing. At that time the only evidence that the court had that the defendants were seeking an early decision was Mr. Young's statement that he had asked for an early trial. And now we have on the record the undisputed affidavits that the attorneys have been diligently proceeding with their efforts to get the whole criminal proceeding quashed, Isn't that true?

MR. OLDS: It is true, your Honor.

JUDGE LEDERLE: That was really the question.

MR. OLDS: The difficulty is that you haven't got just the case of one defendant but you have here such a large number of defendants that it takes time to hear these motions, to argue them. Judge Fitzgerald, who is the executive Judge over there, of course has many other duties to perform, and he has set these on an afternoon, and he hears a few, then he sets another date, and he hears a few more.

Now let's assume that these motions are argued and disposed of, and the criminal trial can proceed providing of course they don't take an appeal on his decisions, or providing let us assume that he may grant some motions which we couldn't possibly feel he was correct in doing, and in that instance we certainly would not be justified in sitting by, and we would have to appeal his decision.

So you see, your Honor, the progress of this case isn't simple as it seems on the face, because many things can occur during the next six months which will prevent it from coming up for trial.

JUDGE SIMONS: All right.

JUDGE LEVIN: May we assume that Judge Fitzgerald is aware of these proceedings and of the order of the court entered here?

MR. OLDS: I imagine he is.

JUDGE LEVIN: You know he is, don't you?

MR. OLDS: I personally haven't talked to him, but Mr. Sullivan is here. Can you answer Judge Levin's question?

MR. SULLIVAN: I do not believe, your Honors, that I can answer it any more accurately than Mr. Olds. Perhaps Mr. Young knows.

MR. YOUNG: I may represent to this court that Judge Fitzgerald is fully aware of the proceedings here and he has stated on arguments I believe on Tuesday and on yesterday afternoon when he adjourned my further argument until next Tuesday that he was aware of what was going on in this court, but that he had to give full, complete, and

adequate consideration to the matters before him; that what was before this court was separate and that he wasn't going to interfere, but he is hearing over there the questions with the greatest possible dispatch. So he knows the question is here.

JUDGE SIMONS: Anything further, Mr. Olds?

MR. OLDS: I have a multitude of decisions, your Honor, if you would like to hear them, indicating that a court of equity in balancing the equities in matters of this kind must move with great caution; it must be a case free from doubt, free from doubt as to its authority and jurisdiction. We say here, your Honor, that this case is far from free from doubt. If this court has no jurisdiction, and certainly it is doubtful that it had jurisdiction, it should not issue any orders shackling the hands of the Governor of the State in performing his constitutional duties. And with that, your Honors, I shall conclude.

JUDGE SIMONS: Very well. Is there anyone else who desires to be heard on behalf of the movants?

MR. SULLIVAN: May it please the court, without reiterating any of the statements or arguments made by Mr. Olds, in further support of the affidavit filed to the motion asking this court to dissolve the temporary restraining order, we have set out in this affidavit that it has come to our attention that the same type of protection of gambling continues in the City of Ecorse despite the indictment of a number of public officials and law enforcement officers in that city.

JUDGE SIMONS: Those affidavits have been traversed by the respondents here, haven't they?

MR. SULLIVAN: Yes, they have, your Honor.

JUDGE SIMONS: That is, they are not undisputed.

MR. SULLIVAN: They are disputed, I suppose, in the sense that they question on what theory or what source we state these matters on information and belief. But in addition to what has been stated in the affidavit, in further support of our position, and we feel compelled to bring this to the court's attention, because as public officers we feel that it is a matter of grave concern to the people of Ecorse and to the people of the community—on Friday, December 21, 1956, shortly after, several months after the indictments, an article appeared in the Detroit Free Press, which started out this way:

> "Continuing numbers racket operations in Ecorse and River Rouge despite a current grand jury investigation of the suburbs, were revealed Thursday night in a raid on a syndicate."

The article goes on to name people involved, and then down at the latter part of the article the paragraph reads:

> "The trio named as handling the ring's suburban numbers business were Clarence Dean, 56, of 2643 Elmwood, who handled Ecorse".

Now the rest of the article pertains to other suburbs. But it seems to us a matter of very grave concern. And when Mr. Olds speaks of balancing the equities I think that he has in mind among other things the public knowledge from newspaper articles that the very thing for which these defendants have been indicted is continuing in the face of that indictment and while they are awaiting trial.

JUDGE SIMONS: Are these persons who are named in this Free Press article—do they include these defendants or any of them?

MR. SULLIVAN: They do not include the defendants, your Honor, but in the course of the examination of these defendants it was established, I think beyond any argument, that the success of any operation including numbers or any other gambling operation depends entirely upon the cooperation the gamblers get from the city officials. We are told by our people who come into the grand jury and we are told publicly in the newspapers that this is continuing in Ecorse, and we know as a fact that the people who have been indicted for permitting this to go on are still in power in Ecorse.

We suggest that is a matter of grave concern to the people of Ecorse as well as to the entire community.

JUDGE SIMONS: Very well.

MR. SULLIVAN: Now I only wish to add this point that occurs to me during the course of the discussion here this morning: it is assumed apparently that these defendants will or some of them here will be removed from office by the Governor. I do not think that we can make that assumption legally. I think that we have to assume, first of all, that if the Governor is made aware that somehow the removal of these men from office will infringe on their constitutional rights that he himself will be compelled to withhold any action.

But at the present status of this case he has no opportunity to do that if he is compelled by that argument.

JUDGE SIMONS: I do not quite understand. The State is moving, moving vigorously, to be free from the

restraining order that stays the removal proceeding. Isn't the assumption the other way that if this motion to dismiss is granted or the restraining order or injunction is lifted, that the removal proceeding will be immediately pursued?

MR. SULLIVAN: The removal proceedings, your Honor, before the Probate Judge in and of themselves could never dislodge any of these defendants from office. It has to be—

JUDGE SIMONS: Well it would go to the Governor and he has the removing authority.

MR. SULLIVAN: Yes, and the only one that has, and until he acts they are not dislodged from office.

Now I think it is certainly a fair assumption that if this argument raised by the complainants in this case is a valid one that their constitutional rights will somehow be infringed, that certainly the Governor will recognize that as a valid argument. And at this point it has not been made to him and if the order of this court stands it cannot be made to him.

JUDGE LEVIN: But before it gets to the Governor in the hearing before Judge Conlin they would be obliged to take the stand and refute the charges which the Governor has lodged against them, and in doing that it is claimed in their complaint that they will be deprived of their constitutional guarantees in the criminal proceeding, because by appearing in the removal proceedings and giving evidence they expose themselves and are compelled to expose themselves in violation of their constitutional rights.

MR. SULLIVAN: Your Honor, on that point I disagree with counsel. They are not compelled to expose themselves in a removal hearing.

JUDGE LEVIN: No, they can sit by and let the State remove them and make no answer at all.

MR. SULLIVAN: Well there are other ways of refuting the charges made by the witness for the State in the removal hearing.

It has been stated by counsel that the witness relied upon by the State primarily in these cases is a pathological liar and various other adjectives which are used to describe him. And certainly if that is true it ought to be apparent to the Governor or to the officer hearing the testimony, in which case there would be no need to refute these charges.

Secondly, if these charges are refutable it is entirely possible they may be refuted by witnesses other than these particular office holders;

And third, how does an individual's right become—constitutional rights become violated because he testifies? These witnesses have all appeared—these defendants have all appeared as witnesses before the grand jury. Does it become a violation of their constitutional rights because they testify in one proceeding before they testify in another?

Supposing these men were under indictment by both the Federal court or Federal grand jury and a State court for the same crime. Could they enjoin the Federal Government or the State Government because they preferred to hear one case before the other?

JUDGE SIMONS: No, but you have here a different situation. You do not have two criminal proceedings. You have one criminal proceeding and one civil proceeding. The measure that is applied to proofs is entirely different in

the civil case than it is in the criminal case. You do not have to have proof beyond a reasonable doubt. You do not have to have a presumption of innocence as you would have in meeting a criminal charge. Isn't that so?

MR. SULLIVAN: That is so, your Honor.

JUDGE SIMONS: Yes.

MR. SULLIVAN: I do not want to prolong this but it is not clear to me how an individual's constitutional rights are in any way infringed because he finds himself in a position where he feels that it is desirable to get up some time before trial and refute or deny the charges made against him.

Let us assume this man is completely innocent and these charges are all false. In what way is he harmed by getting up and denying these charges or refuting them?

Mr. Young has already indicated that Mr. Voisine, for one, will take the stand in the criminal case. Now how does he injure himself by first taking the stand in the removal hearing? And if he is put in a position where he feels he must stand up and refute those charges before he gets to trial, how does that infringe on his constitutional rights?

And speaking of the irreparable damage that is alleged as part of the complaint, how is he irreparably damaged by having this removal proceeding and attending this removal proceeding? How is he irreparably damaged by merely repeating once what he already intends to say in the criminal case? That part is not clear to me.

JUDGE SIMONS: Very well. We will hear from the respondents.

MR. YOUNG: May it please the court, my remarks are very brief. I have nothing whatsoever to say beyond what I have repeated to this court before. We are still in the same position that we were then.

I have not delayed the criminal proceeding.

When Mr. Voisine takes the stand, it becomes necessary, when the State intends to present a conspirator or an alleged co-conspirator as a witness, that other lesser individuals take the stand to refute that which has been said against them as a conspiracy. We need their testimony. They have the rights also. We are not able to defend ourselves.

The Attorney General seems to want to remove us prior to the criminal trial for some particular reason.

Now when they talk about irreparable damage and injury I want to just state one thing before I sit down. In the beginning, when the Sawyer and these other cases were decided we didn't have such a great penalty attached to removal as we do in the various removal statutes today. Our removal statute carries with it a three-year suspension from again running for public office. In certain other cases, I believe in Mr. Korn who is one of the plaintiffs here, it carries a ten-year suspension. We have a lot at stake.

JUDGE SIMONS: Well are we concerned as a court with the penalties or embarrassments that will be suffered by these people if they are removed, in answer to the Sawyer case? That is a matter for congressional action, and not ours.

MR. YOUNG: That is correct, and I feel that we cannot possibly have a fair hearing in our criminal proceeding if

they proceed with this removal. If this injunction is dissolved, we will have a notice to start next week, and we are under way. And before Judge Frank Fitzgerald can ever determine whether or not there is a proper information—I don't know what he is going to do—he may toss it all out. I stated to this court that from some of the pertinent questions that he has asked Mr. Sullivan that there is some serious doubt in Judge Fitzgerald's mind about this indictment. But I have no idea what he is going to do.

JUDGE LEVIN: If he does quash the indictment there is no question but what the State has the right to proceed with the removal proceeding.

MR. YOUNG: That is right, and this matter is obviated.

JUDGE LEDERLE: Mr. Young, will you and your associates diligently proceed for an early trial in the criminal proceeding?

MR. YOUNG: We are diligently proceeding, your Honor. The one complication Mr. Olds mentioned that has probably bogged down the thing more than anything else is that it produces an anomalous situation, and I might call it to the attention of this court.

Judge Patterson released one defendant at the preliminary examination. Now the state of Michigan claims that Judge Patterson abused his discretion by releasing that man, and they have filed a mandamus action against him, that is Judge Patterson, to try to force him to bind over and bring this man back into the conspiracy. We have not delayed it and we don't intend to.

JUDGE SIMONS: All right. Anybody else?

MR. CAVANAGH: A very few remarks, if the court please. I think it has been pretty well summed up. However, there are one or two things that I would like to direct to the court's attention. Principally they are these, and I claimed or alleged these in my affidavit which is on file with the court.

I submit to the court that if some of the things which the attorney general says in the affidavit which Mr. Sullivan has submitted to this court are true, the restraining order which has been issued heretofore by this court in no way interferes with the enforcement of law within the City of Ecorse. It in no way hampers the work of the grand jury nor causes the grand jury to cease issuing indictments.

In fact, there has been a public statement made by the Prosecutor of the County of Wayne that law enforcement has not broken down within the County and as I set forth in my affidavit on information and belief I know of no request made by the grand juror or the Attorney General's office to either the Ecorse Police Department, the State Police, or the Prosecutor's office to suppress specific instances of gambling.

I would like further to direct the court's attention to this fact, and I submit that if Mr. Sullivan or the aides of the grand juror know of specific instances of gambling or for this conspiracy which they allege took place is continuing, that their duty, it is incumbent upon them as public officers to indict or to arrest. They have that avenue open to them and it is not hampered in any way by this court.

One further thing that I would like to bring to the attention of the court is that the State some time ago could have set this case for trial notwithstanding the motions to quash. Those motions could easily have been assigned and

still may be assigned to the trial Judge—those that have not been heard.

My motion to quash was filed long before we filed our civil action here in this court, but nevertheless these motions as well as any attendant motions in the criminal case could be assigned to the trial Judge if the Attorney General's office worked with the dispatch on the criminal case as they apparently are working with dispatch on this removal action.

There is just one case that I would like to call to the court's attention and then I will be seated. It is the three-judge court case arising out of the District Court of California, and it is entitled Cantlay & Tanzola, Inc., vs. The United States.

JUDGE LEVIN: Is that in your brief?

MR. CAVANAGH: No it is not, your Honor.

JUDGE LEVIN: What is it, again?

MR. CAVANAGH: Cantlay & Tanzola, Inc., vs. The United States, 115 Fed. Supp. 72. In that case, incidentally, they cite two famous Supreme Court decisions, The United States vs. United Mine Workers, 330 U.S. 258, and also the Hovey vs. Elliott case, 167 U.S. 49.

But the court therein said, this three-judge court, that where defendants did not at any time prior to presentation of a motion to dissolve temporary restraining order take any steps to comply with the provisions of the order they were precluded from so moving until they should have made every reasonable effort to comply.

And I submit to this court that although in your order of February 1st you did not lay down specific conditions to be followed by either party, but I submit a fair inference could be drawn from that order that each side was to attempt with dispatch to bring this criminal case to trial, and no delay was to be tolerated by this court, dilatory tactics on the part of either the defendants or the complainants in this case. And I submit that the Attorney General's office —there is a question in my mind whether they are even acting in good faith, because I submit, as I did in my affidavit, that they are deliberately delaying this criminal proceeding.

JUDGE SIMONS: Anything else on behalf of the movants?

MR. SULLIVAN: May it please the court, I don't know whether it is necessary to reply to the statement which I wonder whether—I am not sure whether it was made out of a lack of knowledge of procedure or what, but the statement that the State is deliberately delaying the criminal case. Now it has been said that there is a question in this man's mind whether we are proceeding in good faith. I submit to the court that it is an indisputable fact that the only adjournments asked in either of these proceedings were asked for and granted to the defendants in the criminal case and the complainants in this court. There has been no adjournment granted to the State or made by the State to delay the criminal proceedings in Circuit Court.

JUDGE LEVIN: Then you refute the affidavits filed by the plaintiffs in this case. They have stated the contrary fact.

MR. SULLIVAN: I am refuting the affidavit; I am stating that they are not supported by anything factual in connection with these cases. The state has proceeded—

JUDGE SIMONS: Well what is your present position on it? Do you want the criminal case tried or don't you want it tried, and do you want it tried with dispatch or do you want time?

MR. SULLIVAN: Our present position is that we want the criminal case tried as rapidly as it can be tried, but we resent the implication and the statement that we have done anything to delay it, and that statement cannot be supported.

JUDGE SIMONS: I can understand that, but that doesn't answer the question as to whether the State is ready to go ahead.

MR. SULLIVAN: The State is ready to go ahead now, and it has been since the inception of this case.

Now there was a statement made that the State, by attempting to review the action of the examining magistrate on one defendant has delayed this entire proceeding by bringing mandamus in the Circuit Court. That statement was made by Mr. Young.

The fact of the matter is that all of the defendants in this case are claiming that the examining magistrate abused his discretion in binding them over for trial. The State in one case out of nineteen is disagreeing with the magistrate, and saying that the one defendant should have been bound over for trial. One defendant was dismissed at the examination on the motion of the State.

JUDGE SIMONS: Now Mr. Sullivan, you brought up this article in the Free Press about gambling being still pursued in Ecorse. Has the State or the police authorities or the County done anything about that following that lead given by the newspaper?

MR. SULLIVAN: The State Police have a very limited man power force to police these down river communities. They have and I assume continue to police those areas. But the primary police force in Ecorse is the Ecorse police department.

The grand jury is not a police agency nor are the members of its staff a police agency. And the suggestion that the grand jury ought to go out and find these people if they are available is in my opinion absurd. But what we are stating is that these people are operating—

JUDGE SIMONS: You do not recall that any such proposition has been suggested to us, has it?

MR. SULLIVAN: That is the inference I drew from the remarks just made that it was our duty to apprehend these people if we knew about them.

JUDGE SIMONS: All right. Anything further?

MR. SULLIVAN: I want to make it clear on this record in view of what has been said, if I haven't made it clear, that at the outset the removal case by the very nature of the case moved ahead at a greater speed than the criminal case. There is no preliminary examination in the removal case. There are no motions. There was no long arguments. And I might add that three-quarters of the preliminary examination was used up by the defendants in arguments, motions of various breeds and kinds. The State's case was put in in a matter of two or three days.

Now after the two proceedings got under way there were numerous and frequent requests for adjournment, as we have set out in our answer to the complaint. Every one of these requests was made by the complainants in this court,

the defendants in the criminal case. And they were granted by Judge Conlin who sat as one taking testimony on behalf of the Governor.

JUDGE LEVIN: You are talking now about the adjournments requested in the removal case.

MR. SULLIVAN: In the removal case.

JUDGE LEVIN: Did I understand you correctly when you said that the requests for adjournments in the criminal case since the hearing here have come from the plaintiffs in this action, the defendants in the criminal proceeding?

MR. SULLIVAN: No. I think what I intended to say was that there have been no requests to my knowledge on behalf of the State for adjournments in either proceedings. There have been requests for adjournments which were granted to the defendants in the removal proceedings.

JUDGE LEVIN: But not in the criminal proceedings.

MR. SULLIVAN: Not in the criminal proceedings to my knowledge. If there were any it was only a matter of a day or something like that.

JUDGE SIMONS: Very well.

MR. SULLIVAN: But eventually the criminal case caught up with the removal hearing as a result of these adjournments, and now if there is no appeal from the denial of these motions to quash, assuming that they are denied, if there is no appeal from that, the criminal case will come up to be heard before the removal case could be heard, even if the court were to lift its restraining order, so that in either case the criminal case would probably

be brought on for hearing first. However, I have been personally assured by Mr. Young that he intends to test the constitutionality of the grand jury act in every court in the land before he goes to trial in the criminal case. If that is true, if I may rely on that assertion we may infer that it may be a matter of months or even years before these defendants finally come to trial in the criminal case.

In the meantime the situation, we are given to understand, is in Ecorse almost the same as it was before the indictments. It may not be quite as open, but the gambling activities are going on, with the protection of law enforcement people in Ecorse and City officials.

JUDGE SIMONS: All right.

MR. FREED: May it please the court, I wanted to make a very brief statement.

JUDGE SIMONS: Whom do you represent?

MR. FREED: I represent Elmer Korn, your Honors.

JUDGE SIMONS: Why didn't you rise before we closed that side of the case?

MR. FREED: Your Honor asked if there were any further questions on behalf of the movant and didn't ask for further argument on behalf of the complainants in this case. So I didn't want to intrude upon your Honor's position here and prerogative in delegating who should speak. But I merely wish to make a two-minutes' statement.

JUDGE SIMONS: Proceed.

MR. FREED: That Elmer Korn in this case is charged with a separate indictment, not with conspiracy, not with any allegation connecting him in any respect with any of the other complainants in this case, nor with 28 or 29 defendants in the criminal matter.

On Tuesday last, March 5, 1957, Elmer Korn completed his motion to quash and argued it and it was answered by Mr. Charley Farmer on behalf of the Attorney General. And judging from the questions asked by Judge Fitzgerald, to-wit,—

"Mr. Farmer, where are the elements of this crime that you charge?"

it is apparent to this complainant and this talker before your court that Mr. Korn's matter will be quashed.

JUDGE SIMONS: Well we cannot take judicial no ice of that.

MR. FREED: I merely wish to state it. No—except that we have proceeded with such dispatch on behalf of Mr. Korn—

JUDGE SIMONS: All right.

MR. FREED: And done everything possible to get his case out of the way.

JUDGE SIMONS: Very well. The case is submitted. The court will adjourn.

CERTIFICATE

I hereby certify that I have recorded by shorthand the proceedings had in open court in the above-entitled matter, on Friday, March 8, 1957, before the three-judge court as indicated, and that the foregoing transcript, consisting of forty-one typewritten pages, is a true and correct transcript of my said shorthand notes, to the best of my skill and ability.

Dated at Detroit, Michigan, March 9, 1957.

Earl Chamberlin
Official Court Reporter